



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

Twelve Oaks Medical Center  
c/o HOLLOWAY & GUMBERT  
3701 KIRBY DRIVE, SUITE 1288  
HOUSTON TX 77098-3926

#### **Respondent Name**

TPCIGA FOR COLONIAL CASUALTY

#### **MFDR Tracking Number**

M4-05-4435-02

#### **Carrier's Austin Representative Box**

50

#### **MFDR Date Received**

February 17, 2005

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary Dated March 17, 2005:** "...Twelve Oaks Medical Center's request for medical dispute resolution pertains to medical services and treatment provided to the injured employee, [name], during the period February 19, 2004 through February 25, 2004...[name] received treatment at our client's facility relating to spinal surgery. Because Ms [name] admission was inpatient, this claim would be reimbursed pursuant to TWCC Rule 134.401...According to Rule 134.401(c)(6), TWCC, this claim would then be reimbursed at the stop-loss rate of 75% as the total audited charges exceed the minimum stop-loss threshold of \$40,000.00. ...Pertinent medical records, which provide the basis of the unusually extensive services rendered to Cynthia Reyna, are enclosed. These records show that Ms. [name] underwent **nine (9) operations**, summarized on the Operative Report as 1) removal of posterior lumbar segment hardware; 2) exploration of lumbar spinal fusion mass; 3) excision of pseudoarthrosis L5-S1; 4) excision of pseudoarthrosis L4-5; 5) posterior lateral arthrodesis L4-5; 6) posterior lateral arthrodesis L5-S1; 7) posterior spinal segmental instrumentation with DePuy Monarch screws and rods L4 to S1; 8) harvesting, right posterior iliac crest morcellized autograft through a separate fascial incision; and 9) insertion of lumbar epidural catheter at L2 for postop pain management."

**Amount in Dispute:** \$82,909.35

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary Dated March 18, 2005** "The stop-loss exception for outlier cases does not apply as the audited charges do not exceed \$40,000 and the services provided to the claimant were not unusually extensive and costly. There is no evidence that the patient had co-morbidities or complications that required unusually extensive services or that any such services were unusually costly."

**Respondent's Supplemental Position Summary Dated December 14, 2012:** "TPCIGA files this supplemental response pursuant to DWC's December 10, 2012 notice providing TPCIGA the opportunity to do so in light of the opinion in *Texas mutual Ins. Co. v. Vista Comm. Med. Ctr.*, ...The inpatient hospital facility services...were not unusually costly and unusually extensive. Therefore, Requestor is not entitled to reimbursement under the stop-loss exception but should instead be reimbursed under the standard per diem reimbursement method..."

**Responses Submitted by:** Stone Loughlin & Swanson

### **SUMMARY OF FINDINGS**

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
February 19 through 25, 2004	Inpatient Hospital Services	\$82,909.35	\$11,324.90

## ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

#### **Explanation of Benefits**

- F – Pd per diem method of the 1997 inpt fee guidelines.
- N – In order to review this charge we need a copy of the invoice detailing the cost to the provider.
- O – Denial after recon.

Dispute M4-05-4435 was originally decided on June 1, 2005 and subsequently appealed to a contested case hearing at the State Office of Administrative Hearings (SOAH) under case number 453-05-7685.M4. This dispute was then remanded to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) pursuant to a February 16, 2009 SOAH order of remand. As a result of the remand order, the dispute was re-docketed at medical fee dispute resolution and is hereby reviewed.

### **Issues**

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

### **Findings**

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the division concludes that the total audited charges exceed \$40,000.
2. The requestor in its original position statement asserts that "...Because Ms Reyna's admission was inpatient, this claim would be reimbursed pursuant to TWCC Rule 134.401...According to Rule 134.401(c)(6), TWCC, this claim would then be reimbursed at the stop-loss rate of 75% as the total audited charges exceed the minimum stop-loss threshold of \$40,000.00." The requestor presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to demonstrate the particulars of the admission in dispute that constitute unusually extensive services compared to similar services or admissions; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to discuss or demonstrate the particulars of the admission in dispute that constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
  - Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." Review of the submitted documentation finds that the length of stay for this admission was five surgical days and one ICU/CCU; therefore the standard per diem amounts of \$1,118.00 and \$1,560.00 apply respectively. The per diem rates multiplied by the allowable days result in a total allowable amount of \$7,150.00.
  - 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed \$329.00/unit for Vancomycin 1gm. The requestor did not submit documentation to support what the cost to the hospital was for this item billed under Revenue Code 250. For that reason, reimbursement for this item cannot be recommended.
  - 28 Texas Administrative Code §134.401(c)(4)(B) allows that "When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399)." A review of the submitted hospital bill finds that the requestor billed \$384.00 for revenue code 381-Packed Red Cells. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement." Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 381 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
  - 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."

Review of the requestor's medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Charge Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
81389991	Cougar Sm 10mm	Cougar Implant Sm 10mm 5Deg	1 @ \$4,560.00 ea	\$4560.00	\$5016.00
81389991	MCC Hex Nut 2un	MCC Hex Nut T1	1 @ \$90.00	\$90.00	\$99.00
81389991	MCC Hex Screw 2u	MCC Set Screw T1	1 @ \$95.00	\$95.00	\$104.50
81389991	MCC J-Hook 2un	MCC J-Hook Rod ¼ TI	1 @ \$145.00	\$145.00	\$159.50
81389991	MCC Plate	MCC Intermediate LG 55-65- TI	1 @ \$445.00	\$445.00	\$489.50
81389991	MON 65MM Rod 2un	MON Rod Pre bent 6.35x65 MM, TI	1 @ \$250.00	\$260.00	\$286.00
81389991	MON 7.0x35 screw	MON Ped Scw Poly 7.00x35MM TI	1 @ \$920.00	\$920.00	\$1,012.00
81389991	MON 7.0x40 screw	MON Ped Scw Poly 7.00x40MM TI	1 @ \$920.00	\$920.00	\$1,012.00
81389991	Monarch Cap 4un	Typhoon Monarch Cap	1 @ \$224.00	\$224.00	\$246.40
81389991	24 MM Staple 2un	Staple, 24 MM	1 @ \$985.00	\$985.00	\$1,083.50
81389991	25MM Screw 2un	Anti Backout Screw, 25mm	1 @ \$495.00	\$495.00	\$544.50
TOTAL ALLOWABLE				\$10,052.90	

The division concludes that the total allowable for this admission is \$17,202.90. The respondent issued payment in the amount of \$5,878.00. Based upon the documentation submitted, additional reimbursement in the amount of \$11,324.90 is recommended.

### **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in additional reimbursement.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The division hereby ORDERS the respondent to remit to the requestor the amount of \$11,324.90 plus applicable accrued interest per 28 Texas Administrative Code §134.803, due within 30 days of receipt of this Order.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution

\_\_\_\_\_  
December 2012

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**